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Supreme Court, U.S.
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No._____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

EMILY L. LATIMER, et al,
Petitioners

v.

KENNETH L. STAINER, Trustee
Respondent

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS FOR

THE TENTH CIRCUIT

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EMILY L. LATIMER
Petitioner and Appellant

v.

KENNETH L. STAINER, Trustee
Respondent and Appellee

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

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QUESTIONS PRESENTED

1. Was the 10th Circuit Court of Appeals correct in ruling that the Appellants had waived their right to a Jury Trial in Bankruptcy Court and/or District Court?

2. In 1985 and 1986 was the Jurisdiction and powers of the Bankruptcy Court clear enough to imply a waiver of fundamental right to a Jury Trial in Bankruptcy Court?

3. Were the Appellants and their attorney mislead by the Bankruptcy Judge in telling the Appellants that they were not entitled to a Jury Trial in Bankruptcy Court therefore no written request for Jury trial was made?

4. Did the Appellants waive their right to a Jury trial because they did not file a combined request for Jury Trial with a request for Transfer to the District Court if the Bankruptcy Court can conduct Jury Trials?

5. If the Appellants made no claims against the Bankruptcy Estate can the Appellants be deprived of their properties and

their 7th Amendment Rights by unclear procedure and where Jurisdiction lies?

6. Can the Appellants be deemed to have waived a right that they were told they did not have?

LIST OF PARTIES

The parties to the proceedings below were Emily L. Latimer and the unknown heirs, executors, administratrix, devisees and assigns of Maria L. latimer, deceased; Julia Latimer Warren, Reta Latimer Wright, James Harold Latimer and Charles Sylvester Latimer, Petitioners and Appellants.

Kenneth L. Stainer, Trustee, Respondent and Appellee.

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IN THE SUPREME COURT OF THE UNITED STATES

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EMILY L. LATIMER, Petitioner

v.

KENNETH L. STAINER, Trustee

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

The Petitioner Emily L. Latimer, respectfully prays that a Writ of Certiorari issue to review the judgement and opinion of the United States Court of Appeals for the Tenth Circuit entered in the above entitled proceeding on November 7, 1990,

OPINIONS BELOW

The Opinion fo the Court of Appeals for the 10th Circuit is reported at 918F2d136 and is placed in the appendix as number 2.

The memorandum decision of the United States District Court for the Northern District of Oklahoma has not been reported. It is placed in the appendix hereto as number 4.

JURISDICTION

This appeal involves a review of a decision of the United States Court of Appeals, 10th Circuit declaring and imposing a waiver on the Appellants of their fundamental right to a Jury Trial in Bankruptcy Proceedings and declaring that the Bankruptcy Court has no jurisdiction to try Jury cases.

CONFLICTS

Jurisdiction also lies with the U.S. Supreme Court to resolve a conflict between the Eighth Circuit, the Tenth Circuit and the Second Circuit Court of Appeals as to what powers exist in the Bankruptcy Court.

The United States Supreme Court has jurisdiction to review this appeal and the questions presented under 28 USC 1254(1).

On May 17, 1991, in Case No. A-866, Justice Byron R. White, ordered that the time for filing this Petition for Writ of Certiorari be extended to and including June 27, 1991.

The jurisdiction of this Court to review the Judgment of the 10th Circuit is invoked under 28 USC 1254(1).

The jurisdiction to resolve a conflict between the circuits is in compliance with U.S. Supreme Court Rule 17 (A).

STATUTES INVOLVED

28 USC 1254 (1)

28 USC 157B

28 USC 1411

The Bankruptcy Amendments and the Federal Judgeship Act of 1984

STATEMENT OF THE CASE

The Debtor, Caesar C. Latimer, filed his Petition in Bankruptcy on October 5, 1985, prior to filing his petition in Bankruptcy, the Debtor conveyed certain properties back to the rightful owners which was permitted under State law without any presumption of fraud.

A creditor objected to the transfer and representing the Trustee filed an adversary proceeding to set aside the conveyances as being fraudulent and to defraud creditors.

The Appellants in this case are the owners of the property conveyed and filed no claims against the estate. The Appellants were made defendants in the adversary proceeding by the Trustee.

The first response filed by the Appellants was a Plea in Abatement and a Motion to Dismiss. In the rough draft of his pleading the attorney for the Appellants had made a written request for a Jury Trial. (A copy of same is included in the Appendix).

Prior to filing this pleading as drafted, the Appellants, through their attorney, conferred with the Bankruptcy Court about requesting a jury trial on the issues of fraudulent conveyances. The Bankruptcy Court informed the attorney and the Appellants that they were not entitled to a Jury Trial in Bankruptcy Court and the attorney and the Appellants deleted the written demand for a Jury Trial from the original pleading because of what the Bankruptcy Court had stated.

Nevertheless, the Appellants made several oral requests for a Jury Trial in Bankruptcy Court which is admitted by all parties.

The Non-Jury proceeding was held in the Bankruptcy Court and the issues of fraudulent conveyances were held against the Appellants. The Appellants filed a Motion for a New Trial and listed the denial of a Jury Trial as one of the errors committed.

The Appellants appealled the decision of the Bankruptcy Court to the Federal District Court.

The Federal District Court upheld the Bankruptcy Court and the case was appealed to the 10th Circuit.

The 10th Circuit upheld the District Court and the Bankruptcy Court and the appellants are seeking to appeal the decision of the 10th Circuit.

Pending this non-jury trial in Bankruptcy Court the U.S. Supreme Court rendered its opinion in Northern Pipeline vs. Mountain Pipeline 102 Supreme Court 2858 and in 1989 the case of Granfinanciera, sa v.s. Nordberg which gave the appellants their Seventh Admendment Rights to a Jury Trial because the appellants had submitted no claims against the bankrupt estate.

The decision in the Granfinanciera case was entirely different from what the Bankruptcy Judge told the appellants when the appellants inquired about a Jury Trial and requested a Jury Trial.

Now the 10th Circuit Court of Appeals says that the appellants had a right to a Jury Trial but the right was waived.

At no time were the appellants told that they had a right to a Jury Trial by filing a combined Transfer and a Demand f or Jury Trial.

The appellants never intended to waive their right to a Jury Trial but were told they had no right to a Jury Trial.

After the Granfinanciera decision, the appelants thought they would be granted a Jury Trial in Bankruptcy Court but the 10th Circuit held that the Jury Trial was waived because they did not follow the combined Demand & Transfer procedure rule.

If this case and the facts had occurred in the 2nd Circuit the final outcome may have been the same but the procedure to be followed would have been different. Also, the outcome may have been different.

REASONS FOR GRANTING THE WRIT

The appellants would urge two reasons why the Writ of Certiorari should be granted.

I

WAIVER OF JURY TRIAL

Under the facts and the Law as it has evolved the writ should be granted to determine whether or not the appellants and their attorney knowingly and intelligently waived their right to a Jury Trial.

The advisary proceeding against these appellants was commenced 2 years before the Supreme Court decided Granfinanciera, s.a. v.s. Nordberg 109 S. Ct. 2782 (1989) and 3 years before Langenkamp v.s. Culp 111 S. Ct. 330 (1990).

These two cases made it clear that the

appellants met the criteria for obtaining a Jury Trial and were entitled to a Jury Trial on the issue of Fradulent Conveyances.

There are numerous cases pending in the Bankruptcy Courts involving the issue of Fradulent Conveyances and Preferences and the Court should grant the Writ of Certiorari to rule on the implied waiver of a fundamental right to a Jury Trial imposed against the appellants. This is especially true in light of the uncertainty that existed prior to the decision of the Supreme Court in the Granfinanciera case.

Since the appellants rights and the law was unclear as to the rights to a Jury Trial in this area, the appellants urge the Court to set some kind of a standard or guideline for the lower courts to follow in protecting the fundamental right to a Jury Trial as provided by the 7th Amendment.

Massachusettes Trustees v.s. U.S. 377 U.S. 235

On August 10, 1990, the 10th Circuit Court of Appeals decided in the In Re Kaiser case, 911F2d380 that the appellants had made a timely demand for Jury Trial and the 10th Circuit followed the Supreme Court's decision in Granfinanciera s.a. v.s. Nordberg.

In the Kaiser case no express motion was ever made for a Jury Trial.

Three months later on November 17, 1990 the 10th Circuit Court of Appeals refused to apply the Granfinanciera decision to the appellants case but imposed a Waiver of Jury Trial against the appellants but did admit an express oral motion for a Jury Trial had been made by the appellants. The granting of a Jury Trial by the Bankruptcy Court in the District Court would not have caused any unusal delay or any extraordinary expense on either side.

After imposing the Waiver of Jury Trial right the Court set up a requirement requesting a transfer and written demand for a Jury Trial

in order to preserve the right to a Jury Trial. This was not made known to the appellants and their attorney in 1985 or 1986.

The appellants may have waived their right to a Jury Trial but it was not their intention to do so nor was it knowingly done.

The appellants are not the only persons confused in this area but this confusion has been addressed in several Law Review Articles.

72 Minn L. Rev 967

20 St. Mary's L. J. 799

II

CONFLICT BETWEEN THE CIRCUITS

The appellant would show the Court that there exist a split and conflict between the Federal Circuits as to the powers of the Bankruptcy Court.

Two circuits have split on the power of a Bankruptcy Judge to conduct a Jury Trial. In the Eighth Circuit, the Circuit Court of Appeals has held that no power exist for the Bankruptcy Court to conduct a Jury Trial.

In Re United Missouri Bank 901 F2d 1449

In Re Lee Way Holding Co. 115 BR 586

The Court of Appeals for the 2nd Circuit holds that the Bankruptcy Court does have power to conduct a Jury Trial.

In Re Ben Cooper Inc. 896 F2d 1394

If the circuits are split on the Jury Trial issue and the appellants have been told that they are not entitled to a Jury Trial who would know what their rights are?

If you do not know what your rights are then how can you waive those rights?

The opinion of the 10th Circuit in this case held that the appellant made a request for a Jury Trial in a forum where none existed and because no written demand for jury was made

along with a request for transfer the appellants loss their fundamental right to a Jury Trial.

The appellants submits to the Court that if this cause of action was brought and decided in the 2nd Circuit the final result may have been different and the appellants may have received greater protection of their fundamental rights and a different response to their request for a Jury Trial.

In order to resolve the confusion the appellants would urge the Court to grant certiorari and set guidelines for the lower courts to follow because the appellants and others are now confused over the administration of the Bankruptcy Act.

New York v.s. Saper 336 U.S. 328

Under the view and the decision of the 10th Circuit in this case a written demand for a Jury Trial would not be addressed to the Bankruptcy Court and forum where the litigants are present but to the District Court where the litigants are not present.

CONCLUSION

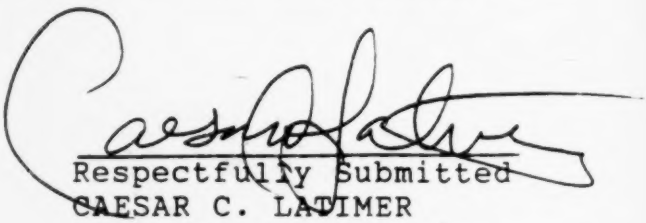
For these various reasons, this petition for certiorari should be granted. Petitioner emphasizes the fact that the appellants did not knowingly and intentionally waive their right to a Jury Trial but were told that they had no right to a Jury Trial.

The conflict between the circuits as to the powers of the Bankruptcy Court in the various circuits should be resolved.

The citizens in one circuit should not have greater fundamental rights than the citizens in another circuit.

The power of the Bankruptcy Judge to conduct Jury Trials should be the same in all circuits. The Seventh Amendment fundamental right to a Jury Trial should be strongly protected in all circuits and the imposition of waivers applied reluctantly.

The conflict between the circuits described herein will be resolved by the United States Supreme Court. If the appellants are denied certiorari in this case, the appellants will lose their property, their right to a Jury Trial and the confusion will continue.



Respectfully Submitted
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